

Superseded 5/10/2016

63A-5-206 Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

- (a) "Capital developments" and "capital improvements" have the same meaning as provided in Section 63A-5-104.
- (b) "Compliance agency" has the same meaning as provided in Section 15A-1-202.
- (c)
 - (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.
 - (ii) "Facility" does not mean an unoccupied structure that is a component of the state highway system.
- (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.
- (e) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.
- (f) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2)

- (a)
 - (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than \$100,000, unless there is memorandum of understanding between the director and an institution of higher education that permits the institution of higher education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000.
 - (ii) A state entity may exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if:
 - (A) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and
 - (B) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvements, and code inspection standards.
- (b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.
- (c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency shall approve the location, design, plans, and specifications.

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

- (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;
- (b) is within a designated research park at the University of Utah or Utah State University;

- (c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or
 - (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.
- (4)
- (a)
 - (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.
 - (ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.
 - (iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.
 - (iv) State entities that receive a delegated project may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5-209.
 - (b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency or institution and that are located on state property, the State Building Board may authorize the owner to administer the design and construction of the project instead of the division.
- (5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:
- (a) oversee and manage the construction without involvement, oversight, or management from the division; or
 - (b) arrange for management of the project by the division.
- (6)
- (a) The role of compliance agency as provided in Title 15A, State Construction and Fire Codes Act, shall be provided by:
 - (i) the director, for projects administered by the division;
 - (ii) the entity designated by the State Capitol Preservation Board, for projects under Subsection (3)(a);
 - (iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);
 - (iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or
 - (v) the institution, for projects exempt from the division's administration under Subsection (5)(a).
 - (b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).
 - (c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

- (i) only review plans and inspect construction to enforce the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and
 - (ii) charge a building permit fee of no more than the amount it could have charged if the land upon which the improvements are located were not owned by the state.
- (d)
 - (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Sections 10-9a-304 and 17-27a-304.
 - (ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.
- (7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:
 - (a) complies with any restrictions placed on the project by the State Building Board; and
 - (b) is appropriate for the purpose and setting of the project.
- (8) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective.
- (9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.
- (10)
 - (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.
 - (b) The director shall:
 - (i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and
 - (ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.
- (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:
 - (a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;
 - (b) use any unencumbered existing account balances to fund that design work; and
 - (c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.
- (12)
 - (a) The director, the director's designee, or the state entity to whom control has been designated under Subsection (4), shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:
 - (i) the nature of the project has been significantly altered since prior notification;
 - (ii) the project would significantly change the nature of the functions presently conducted at the location; or
 - (iii) the project is new construction.
 - (b) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss these issues.
- (13)

- (a)
 - (i) Before beginning the construction of student housing on property owned by the state or a public institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.
 - (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:
 - (A) the county in whose unincorporated area the privately owned residential property is located; or
 - (B) the municipality in whose boundaries the privately owned residential property is located.
- (b)
 - (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.
 - (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.